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Administrator  
Office of Policy Development and Research, ETA  
U.S. Department of Labor  
200 Constitution Avenue, N.W., Room N-5641  
Washington, DC 20210

**RIN 1205-AB55: Comments on Proposed Rules for “Temporary Agricultural Employment of H-2A Aliens in the United States; Modernizing the Labor Certification Process and Enforcement” in Fed. Reg., 8538-8585 (13-Feb-08).**

Dear Sir or Madam:

I applaud your effort for modernizing the H-2A work visa program. This agriculture work visa definitely needs to operate in a more efficient and effective manner.

Several improvements that have been announced, such as applying solely to the California Service Center, reducing H-2A application processing times to 15 business days or less, and certifying that there are no fees imposed on potential H-2A worker participants contingent on their sponsorship into the work visa program, are major developments, and I am encouraged by these new efforts.

However, there are a few other issues that require more strategic attention. I write you today to discuss our concerns.

The Department of Labor estimates about 750,000 people are working illegally in agriculture. The current H-2A program now has an application volume of 7,300 applications—representing almost 75,000 workers—a year. How does DOL ETA plan to operate and administer a work visa program that may be at least 10 times the current size H-2A work visa program? In recent years, both the Department of State and USCIS have had high demand for their services and have had to bring back retirees and work extra hours to process the high number of U.S. passports and citizenship applications. How will DOL ETA scale-up its staff and funding to administer and operate the H-2A work visa program?

Also, how does DOL ETA plan on monitoring employer and laborer compliance? Auditing a few certifications or verifying a small number of employer attestations does not sound extensive enough. I would advocate site visits, employer and worker interviews, 24/7 anonymous call-in number to report emergencies, and work visa representational offices where contract disputes can be discussed between the employer and laborer. In the early years of the enhanced H-2A work visa program, I suggest having enough resources, staff and funds, to audit five percent of the employers and laborers. I know this sounds unreasonable, but the U.S. urgently needs a well functioning work visa system, where both the employer and worker are in compliance. Making it a successful work visa program would exponentially save on many expenses directly attributed to illegal immigration.

As indicated in the proposed changes, the H-2A participant will now have the luxury to seek work from another employer within 30 days of the last contract expiration date. However, H-2A participants should be able to switch employers at any moment during their contracts. In other words, H-2A participants should have the opportunity to take the best job offer available. Conversely, employers should be able to compete for the best labor available. This would also provide plenty of incentives for employers to offer better working and living conditions. All in all, the ability to end any short-term labor contract is essential for a dynamic and productive labor market.

To reward and provide incentives to work visa participants who successfully traveled year after year from their home countries, worked in the United States, and returned back to their home countries, they should be given the option to secure a renewable 10-year work and travel visa. This would boost economic relations between the United States and work visa participant home countries. To Americans and work visa home countries, it indicates if you follow U.S. immigration laws, you will have the chance to travel and work in the United States. Without this treasure chest of future opportunities within the United States, the H-2A work visa program lacks the most sought after incentive: the leisure to travel, live, and work in the United States years after completing the H-2A program. To honor their successful participation, the United States should consider granting 10-year flexible work and travel visas to former H-2A participants who seek them from their home countries.

Although I am encouraged by many new developments to the H-2A work visa program, I think DOL ETA lacks the resources and funds to respond in 15 days to each application and is not fully prepared to administer and deliver on all the necessary components of a successful work visa program. For example, we expect this work visa program to probably be at least double or triple in size within a year or two—if not more, yet it has taken other government agencies, in similar circumstances, almost 3 years to get the necessary funding and staff levels to the appropriate level to meet the demand for their services. Overall, please advise how DOL ETA plans on handling the increase in demand for its services, so a successful work visa program can be a positive experience for H-2A participants and employers alike, rather than a bottleneck of nightmare stories that plague the current program.

Then, in an effort to preempt numerous critics, I suggest allowing participants to seek higher wages and better working conditions at any time during a H-2A contract. Additionally, without a treasure at the end of a successful H-2A experience, the program gives a sense of purposelessness once a participant has successfully completed the program. I recommend that the United States should reward former H-2A participants, who apply from their home countries, with a 10-year work and travel visa.

I thank you for the opportunity to share my comments. I look forward to the program.

Sincerely,

Kurt Grela  
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